IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 111 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMRUTBHAI CHHANIYABHAI TANDEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 111 of 2003

MR ADIL MEHTA for MR JB PARDIWALA for Petitioner No. 1

MS NANDINI JOSHI, AGP for Respondents

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 20/05/2003

ORAL JUDGEMENT

The petitioner detenu, Amrutbhai Chhaniyabhai Tandel, has challenged the order of detention dated

16.11.2002 passed by the District Magistrate, Navsari, respondent no.2 herein under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (in short, 'PASA Act').

In the grounds of detention supplied to the petitioner of the even date, the detaining authority has placed reliance on five Prohibition cases registered against the petitioner with regard to the incidents alleged to have taken place between 10.7.2001 to 12.6.2002. All the said cases are pending before the Court for trial. Besides the aforesaid cases, the detaining authority has also placed reliance on the statements of three witnesses whose identity has not been disclosed claiming privilege under Section 9(2) of the PASA Act for the incidents which took place on or about 6.8.2002 and 1.7.2002. In those incidents, it has been alleged that the petitioner tried to extort money at the point of knife, threatened the witnesses to store illicit liquor and demanded vehicle for transportation of liquor. On refusal by the witnesses to accede to the demand, an atmosphere of terror was created by the petitioner affecting law and order situation in the area. Considering the aforesaid material, the detaining authority recorded a finding that the petitioner is a 'Bootlegger' within the meaning of Section 2(b) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, his detention is necessary and the order of detention has been passed.

Learned Counsel appearing for the petitioner has assailed the order of detention on various grounds. However, it is not necessary for me to consider each and every ground since the petition is capable of being disposed of only on the short ground of long and inordinate delay in passing the order of detention which has snapped the livelink between the prejudicial activities of the detenu and the object with which the order of detention has been passed. Learned Counsel submits that the last offence was registered on 12.6.2002 while the order of detention is passed on 16.11.2002, i.e. almost after a period of five months. He, therefore, submits that in the same manner, the statements of the witnesses are recorded on 14.9.2002, which were verified by the Divisional Police Superintendent on 23.9.2002 and the order of detention is passed on 16.11.2002. It is, therefore, submitted that the delay has not been explained.

Learned AGP Ms.Nandini Joshi submits that in the

instant case, the detaining authority received the proposal on 15.10.2002 which was verified on 13.11.2002. According to her submission, if this period is taken into consideration, it cannot be said that there is inordinate delay in passing the order of detention. It is not possible for me to accept the submission advanced by learned AGP. Even if the date of proposal, i.e. 15.10.2002 received by the detaining authority is accepted, the detaining authority has not explained the delay in verifying the proposal till 13.11.2002. Thus, the unexplained delay, in my opinion, vitiates the order of detention. As stated above, the last offence was registered on 12.6.2002 while the order of detention is passed on 16.11.2002, i.e. almost after a period of five months. Thus, there is long and inordinate delay in passing the order of detention which has snapped the livelink between the prejudicial activities of the petitioner and the object with which the order of detention has been passed.

The Apex Court in the case of Pradeep Nilkanth Paturkar v. S.Ramamurti and ors., reported in AIR 1994 SC 656 has ruled that the unexplained delay whether short or long especially when a specific plea is taken by the appellant will be a ground for quashing and setting aside the order of detention. In view of this, the petition is required to be allowed only on the sole ground of long and inordinate delay in passing the order of detention.

In the result, the petition is allowed. The impugned order of detention dated 16.11.2002 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

(Kshitij R. Vyas, J.)

Sreeram.